

STATE OF MICHIGAN
COURT OF APPEALS

BEVERLEY RICHARDS, as Next Friend of
ZAVIER GRAVES, a Minor,

UNPUBLISHED
August 26, 2010

Plaintiff-Appellee,

v

No. 289332
Wayne Circuit Court
LC No. 08-118744-NH

SINAI-GRACE HOSPITAL, DETROIT
MEDICAL CENTER, d/b/a DMC HOSPITAL
PARTNERSHIP, d/b/a SINAI HOSPITAL OF
GREATER DETROIT, d/b/a SINAI GRACE
HOSPITAL, DETROIT MEDICAL CENTER
HEALTH CARE CENTERS, INC., and SOPHIE
WOMACK, M.D.,

Defendants-Appellants.

Before: M.J. KELLY, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Defendants appeal by leave granted the trial court's order denying their motion for summary disposition in this medical malpractice action. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On July 28, 1993, plaintiff Beverley Richards presented to Sinai Grace Hospital in active labor. On the same day, minor plaintiff Xavier Graves was born, at a gestational age of 28 5/7th weeks. Xavier was taken to the neonatal intensive care unit (NICU), where he experienced respiratory distress and was placed on a ventilator. The complaint alleged that, on various occasions during Xavier's 32-day stay in the NICU he was hyperventilated, and as a result, suffered hypocarbia, hypoxemia, and hypotension. Xavier sustained serious injuries, including severe brain damage, triplegic cerebral palsy, severe developmental delay, and a seizure disorder.

In May 2005 plaintiff filed a 46-page notice of intent (NOI) to file a medical malpractice practice action. Plaintiff filed suit on July 25, 2008. Defendants moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that plaintiff's NOI failed to meet the statutory requirements set out in MCL 600.2912b because the NOI did not contain statements regarding the alleged manner in which defendants' alleged breach of duty proximately caused Xavier's injuries. Defendants asserted that the filing of a deficient NOI did not toll the statute of limitations; therefore, pursuant to MCL 600.5851, as the statute read on July 28, 1993, the date

the instant cause of action accrued, the statute of limitations expired on July 28, 2008, Xavier's fifteenth birthday.

The trial court denied defendants' motion for summary disposition, stating in part:

In the Notice of Intent under Proximate Cause of Injuries, it is stated that Defendant's [sic] failure to undertake the above described actions resulted in neurologic deficits.

Reading the Notice of Intent in its entirety, it is beyond dispute that it sets forth the manner in which the alleged breach of the standard of care was the proximate cause of the injury to Xavier Graves. During the time that the minor was in the ICU, the Defendants failed to properly ventilate, overventilated, and failed to avert and appropriately manage hypocarbia resulting in neurologic deficit, which included triplegic cerebral palsy, severe developmental delays, and seizure disorder.

* * *

In the instant case, it is clear that the Plaintiff is alleging in the Notice of Intent that Defendants failed to treat overventilation and appropriately manage hypocarbia causing a neurological deficit of triplegic cerebral palsy, severe developmental delays, and seizure disorder.

* * *

. . . In the instant case, the Notice of Intent sets forth the overventilation and the failure to appropriately manage hypocarbia proximately caused Xavier Graves' neurological deficits.

On appeal, defendants argue that plaintiff's NOI did not meet the statutory requirements of MCL 600.2912b. Defendants specifically assert that the NOI lacked a statement of the manner in which the defendant's alleged breach proximately caused the claimed injuries. We disagree. We review a trial court's decision on a motion for summary disposition de novo, *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998), and also review an issue of statutory interpretation de novo. *McClellan v Collar (On Remand)*, 240 Mich App 403, 409; 613 NW2d 729 (2000).

Among the statutorily enumerated items required to appear in an NOI is a causation statement. MCL 600.2912b(4)(e); see, also, *Tousey v Brennan*, 275 Mich App 535, 539, 739 NW2d 128 (2007). More specifically, the plaintiff must state the "manner in which it is alleged the breach of the standard of practice or care was the proximate cause of the injury claimed in the notice." MCL 600.2912b(4)(e). To satisfy this requirement, the notice must contain specific allegations regarding the conduct of the named defendants. *Roberts [v Mecosta Co Gen Hosp] (After Remand)*, 470 Mich [679,] 701[; 684 NW2d 711 (2004)]. It is not sufficient to state that defendants' negligence caused the alleged harm. Rather, plaintiff must describe the manner in which the alleged breach caused the

complained of injury. *Id.* at 699-700 n 16 [*Decker v Stoiko*, ___ Mich App ___, ___ NW2d ___ (Docket Nos. 284155, 285870, & 290633, issued March 30, 2010), slip op, p 10.]

The NOI contained the following proximate causation statements: Defendants “were negligent in not doing what ordinary prudent persons would do under the same or similar circumstances[.]” and claimants “sustained damages as a direct and proximate result of . . . Defendants’ breaches as herein alleged[.]” “However, the notice must be read in its entirety.” *Id.* at 10. Reading the NOI as a whole and together with the underlying facts, we conclude that the NOI describes the manner in which the alleged breaches of the standard of care by defendants were the proximate cause of Xavier’s injuries.

The NOI indicates that defendants failed to avert preterm labor and failed to administer tocolytics, steroids, and antibiotics prenatally, resulting in Xavier’s preterm birth at 28 5/7th weeks. The NOI further indicates that, after his birth, Xavier developed respiratory distress and required ventilation. However, Xavier suffered from persistent hypocarbia during the time that he was ventilated. Plaintiff alleged that defendants breached a duty to properly ventilate Xavier, causing overventilation, and failing to avert and properly manage the resulting hypocarbia. According to plaintiff, defendants’ negligence caused “neurologic deficits,” which the NOI indicates include severe brain damage, triplegic cerebral palsy, severe developmental delay, and a seizure disorder. We are able to discern from the NOI the manner in which it is alleged the breaches of the standard of care proximately caused the injuries claimed in the notice, MCL 600.2912b(4)(e), and thus we conclude that the trial court properly denied defendants’ motion for summary disposition on this ground. Furthermore, because we reject defendants’ claim that the NOI is defective, we need not address defendants’ second argument that the failure to file an NOI that complies with statutory requirements necessitates a dismissal with prejudice if the statute of limitations has expired.

Affirmed.

/s/ Michael J. Kelly
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder